

CHAPTER NO. 215

HOUSE BILL NO. 835

By Representative Garrett

Substituted for: Senate Bill No. 1009

By Senator Ford

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 5, Part 5 and Title 68, Chapter 3, relative to the cremation of dead human bodies and body parts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Alternative container" means a receptacle, other than a casket, in which a dead human body or body parts are transported to a crematory facility and placed in the cremation chamber for cremation, and that meets all of the following requirements:

(A) Is composed of readily combustible materials that are suitable for cremation;

(B) Must be capable of being closed in order to provide a complete covering for the dead human body or body parts;

(C) Is resistant to leakage or spillage;

(D) Is sufficiently rigid to be handled readily; and

(E) Provides protection for the health and safety of crematory personnel;

(2) "Antemortem cremation authorization form" means an instrument executed by an individual or individual's guardian, custodian or other personal representative, prior to death, to provide instructions and authorization for cremation following the death of a human being or removal of body parts to be cremated;

(3) "Authorizing agent" means the person or persons who are entitled to order the cremation of a decedent or body parts and to order the final disposition of the cremated remains of a decedent or body parts;

(4) "Body parts" means limbs or other portions of the anatomy that are removed from a living person for medical purposes during biopsy, treatment, or surgery. Body parts also includes dead human bodies that have been donated to science for purposes of medical education or research and any parts of such a dead human body that were removed for those purposes. Nothing in this act shall be construed to permit the cremation of medical waste at the request of a hospital or other institution. Only the individual from whose body the parts were removed, or their duly appointed representative, may make arrangements with the crematory for the cremation of body parts;

(5) "Casket" means a rigid container that is designed for the encasement of a dead human body and that is constructed of wood, metal, or another rigid material, is ornamented and lined with fabric, and may or may not be combustible;

(6) "Cremation authorization form" means an instrument executed by an authorizing agent, other than the deceased, authorizing the cremation of a deceased human being or body parts of a human being following the death of a human being or removal of body parts to be cremated;

(7) "Temporary container" means a receptacle for cremated remains composed of cardboard, plastic, metal, or another material that can be closed in a manner that prevents the leakage or spillage of the cremated remains and the entrance of foreign material, and that is of sufficient size to hold the cremated remains until they are placed in an urn or scattered; and

(8) "Urn" means a receptacle designed to encase cremated remains permanently.

SECTION 2.

(a) Any person, on an antemortem basis, may serve as the person's own authorizing agent, authorize the person's own cremation, and specify the arrangements for the final disposition of the person's own cremated remains by executing an antemortem cremation authorization form. A guardian, custodian, or other personal representative who is authorized by law or contract to do so on behalf of a person, on an antemortem basis, may authorize the cremation of the person and specify the arrangements for the final disposition of the person's cremated remains by executing an antemortem cremation authorization form on the person's behalf. Any such antemortem cremation authorization form also shall be signed by one (1) witness. The original copy of the executed authorization form shall be retained by the licensed establishment arranging for the cremation and a copy shall be retained by the person who executed the authorization form. The person who executed an antemortem cremation authorization form may revoke the authorization at any time by providing written notice of the revocation to the licensed establishment arranging for the cremation. The person who executed the authorization form may transfer the authorization to another licensed establishment by providing written notice to the licensed establishment named in the original authorization of the revocation of the authorization and executing a new antemortem cremation authorization form authorizing another licensed establishment to conduct the cremation. If more than one authorizing form exists the most current form will supercede the first.

(b) Each antemortem cremation authorization form shall specify the chain of custody for the cremated remains.

(c) When the operator of a crematory facility is in possession of a cremation authorization form that has been executed on an antemortem basis in accordance with this section, the crematory facility has possession of the decedent to which the antemortem authorization pertains, and the crematory facility has received payment for the cremation of the decedent and the final disposition of the cremated remains of the decedent or is otherwise assured of payment for those services, the crematory facility shall cremate the decedent and dispose of the cremated remains in accordance with the instructions contained in the antemortem cremation authorization form, unless a person identified as being entitled to act as the authorizing agent for the cremation of the decedent in the

absence of the antemortem authorization has modified, in writing, the arrangements for the final disposition of the cremated remains of the decedent or has canceled the cremation and made alternative arrangements for the final disposition of the decedent's body.

(d) An antemortem cremation authorization form executed pursuant to subsection (a) does not constitute a contract for conducting the cremation of the person named in the authorization form or for the final disposition of the person's cremated remains. Despite the existence of such an antemortem cremation authorization, a person entitled to act as the authorizing agent for the cremation of the decedent named in the antemortem authorization, in the descending order of priority in which such persons are listed, may modify, in writing, the arrangements for the final disposition of the cremated remains of the decedent set forth in the authorization form or may cancel the cremation and claim the decedent's body for purposes of making alternative arrangements for the final disposition of the decedent's body. The revocation of an antemortem cremation authorization form executed pursuant to subsection (a), or the cancellation of the cremation of the person named in the antemortem authorization or modification of the arrangements for the final disposition of the person's cremated remains as authorized by this section, does not affect the validity or enforceability of any contract entered into for the cremation of the person named in the antemortem authorization or for the final disposition of the person's cremated remains.

(e) Nothing in this section applies to any antemortem cremation authorization form executed prior to the effective date of this act. Any funeral home or crematory facility may specify, with the written approval of the person who executed the antemortem authorization, that such an antemortem authorization is subject to the provisions of this act.

SECTION 3.

(a) The following persons, in the descending order of priority listed below, may serve as an authorizing agent for the cremation of a dead human body, including, without limitation, a dead human body that was donated to science for purposes of medical education or research:

(1) The spouse of the decedent, at the time of the decedent's death;

(2) The decedent's surviving adult children. If the decedent is survived by more than one (1) adult child, any adult child of the decedent who states on the cremation authorization form that all of the decedent's other adult children have been notified of the decedent's death and of the plans to cremate the decedent and that none of them have expressed an objection to the cremation, may serve as the authorizing agent;

(3) The decedent's surviving parent or, if the decedent was under eighteen (18) years of age at death, a surviving parent or the guardian or custodian of the decedent. If the decedent is survived by both parents, either of them may serve as the authorizing agent by stating on the cremation authorization form that the other parent has been notified of the decedent's death and of the plans to cremate the decedent and that the other parent expressed no objection to the cremation;

(4) The person in the next degree of kinship to the decedent to inherit the estate of the decedent if the decedent had died intestate. If there is more than one (1) person of that degree of kinship, any of them may serve as the authorizing agent;

(5) Any person acting on the instructions of a decedent who authorized the decedent's own cremation by executing an antemortem cremation authorization form;

(6) A person serving as the executor or legal representative of the decedent's estate who is acting in accordance with the decedent's written instructions for the final disposition of the decedent's body;

(7) If the decedent was an indigent person or other person the final disposition of whose body is the responsibility of the State of Tennessee or a political subdivision thereof, the public officer or employee responsible for arranging the final disposition of the decedent's body;

(8) In the case of an individual who has donated the individual's body to science for purposes of medical education or research, or whose death occurred in a nursing home, rest home, or home for the aged, or hospital and who has executed an antemortem cremation authorization in which the medical education or research facility, nursing home, rest home, home for the aged, or hospital is designated to make arrangements for the final disposition of the decedent's body, a representative of that facility or institution; or

(9) In the absence of any of the parties named in subdivisions (1) to (8) of this section, any person willing to assume the responsibility of an authorizing agent.

(b) If body parts were removed from a living person, the person from whom the body parts were removed or the guardian, custodian, or other personal representative of the person from whom the body parts were removed who is authorized by law or contract to arrange for the disposition of the body parts may serve as the authorizing agent for the cremation of the body parts.

(c) If body parts were removed from a decedent whose body was donated to science for purposes of medical education or research, the medical education or research facility to which the decedent's body was donated may serve as the authorizing agent for the cremation of the body parts.

SECTION 4.

(a) No operator of a crematory facility shall cremate or allow the cremation at a crematory facility of a dead human body, other than one that was donated to science for purposes of medical education or research, until all of the following have occurred:

(1) A period of at least twenty-four (24) hours has elapsed since the decedent's death, unless the decedent having died from a virulent communicable disease, the Department of Health or Board of Health having territorial jurisdiction where the death of the decedent occurred requires by rule or order the cremation to occur prior to the end of that period;

(2) The operator has received a burial or burial-transit permit that authorizes the cremation of the decedent;

(3) The operator has received a completed cremation authorization form that authorizes the cremation of the decedent. A blank cremation authorization form shall be provided by the operator; and

(4) The operator has received any other documentation required by this State or a political subdivision of this State.

(b) No operator of a crematory facility shall cremate or allow the cremation of any body parts, including dead human bodies that were donated to science for purposes of medical research or education, at a crematory facility until both of the following have occurred:

(1) The operator has received a completed cremation authorization form or, if the decedent has executed an antemortem cremation authorization and has donated the decedent's body to science for purposes of medical education or research, an antemortem cremation authorization form; and

(2) The operator has received any other documentation required by this State or a political subdivision of this State.

SECTION 5.

(a) A cremation authorization form authorizing the cremation of a dead human body, other than one that was donated to science for purposes of medical education or research, shall include the following:

(1) The identity of the decedent;

(2) The name of the funeral director or other individual who obtained the burial or burial-transit permit authorizing the cremation of the decedent;

(3) The name of the authorizing agent and the relationship of the authorizing agent to the decedent;

(4) A statement that the authorizing agent in fact has the right to authorize cremation of the decedent and that the authorizing agent does not have actual knowledge of the existence of any living person who has a superior priority right to act as the authorizing agent under this act. If the person executing the cremation authorization form knows of another living person who has such a superior priority right, the authorization form shall include a statement indicating that the person executing the authorization form has made reasonable efforts to contact the person having the superior priority right and has been unable to do so and that the person executing the authorization form has no reason to believe that the person having the superior priority right would object to the cremation of the decedent;

(5) A statement of whether the authorizing agent has actual knowledge of the presence in the decedent of a pacemaker, defibrillator,

or any other mechanical or radioactive device or implant that poses a hazard to the health or safety of personnel performing the cremation;

(6) A statement indicating whether the crematory facility is to cremate the casket or alternative container in which the decedent was delivered to or accepted by the crematory facility;

(7) The authorization for the crematory facility to cremate the decedent and to process or pulverize the cremated remains as is the practice at the particular crematory facility;

(8) A statement of whether it is the crematory facility's practice to return all of the residue removed from the cremation chamber following the cremation or to separate and remove foreign matter from the residue before returning the cremated remains to the authorizing agent or the person designated on the authorization form to receive the cremated remains; due to the minute size of cremated particles, some commingling may occur.

(9) The name of the person, or representative, who is to receive the cremated remains of the decedent from the crematory facility;

(10) The manner in which the final disposition of the cremated remains of the decedent is to occur, if known. If the cremation authorization form does not specify the manner of the final disposition of the cremated remains, it shall indicate that the cremated remains will be held by the crematory facility, or the funeral director, for thirty (30) days after the cremation, unless, prior to the end of that period, they are picked up from the crematory facility by the person designated on the cremation authorization form to receive them. The authorization form shall indicate that if no instructions for the final disposition are provided on the authorization form and that if no arrangements for final disposition have been made within the thirty-day period, the crematory facility may return the cremated remains to the authorizing agent. The authorization form shall further indicate that if no arrangements for the final disposition of the cremated remains have been made within sixty (60) days after the completion of the cremation and if the authorizing agent has not picked them up or caused them to be picked up within that period, the operator may dispose of them in accordance with the provisions of this act;

(11) The certification of the authorizing agent to the effect that all of the information and statements contained in the authorization form are accurate; and

(12) The signature of a funeral director as a witness. If a licensed funeral director signs the authorization form as a witness, the funeral director is responsible for verifying the accuracy of the information and statements required under subdivisions (1) and (2) of this section, but is not responsible for verifying the accuracy of any of the other information or statements provided on the authorization form by the authorizing agent, unless the funeral director has actual knowledge to the contrary regarding any of the other information or statements. In addition, at the time the decedent is delivered to the crematory facility, the funeral director shall certify that the dead human body delivered to the crematory facility is that of the decedent identified on the authorization form.

(b) An authorizing agent who is not available to execute a cremation authorization form in person may designate another individual to serve as the authorizing agent by providing a written designation, acknowledged before a notary public or other person authorized to administer oaths, authorizing such other individual to serve as the authorizing agent, or by sending to the licensed establishment a facsimile transmission of the written designation that has been so acknowledged. Any such written designation shall contain the name of the decedent, the name and address of the authorizing agent, the relationship of the authorizing agent to the decedent, and the name and address of the individual who is being designated to serve as the authorizing agent. Upon receiving such a written designation or a facsimile transmission of such a written designation, the operator shall permit the individual named in the written designation to serve as the authorizing agent and to execute the cremation authorization form authorizing the cremation of the decedent named in the written designation.

(c) An authorizing agent who signs a cremation authorization form under this section is hereby deemed to warrant the accuracy of the information and statements contained in the authorization form, including the identity of the decedent and the agent's authority to authorize the cremation.

(d) At any time after executing a cremation authorization form and prior to the beginning of the cremation process, the authorizing agent who executed the cremation authorization form under subsections (a) or (b) of this section may, in writing, modify the arrangements for the final disposition of the cremated remains of the decedent set forth in the authorization form or may, in writing, revoke the authorization, cancel the cremation, and claim the decedent's body for purposes of making alternative arrangements for the final disposition of the decedent's body. The operator of a crematory facility shall cancel the cremation if the operator receives such a revocation before beginning the cremation.

(e) A cremation authorization form executed under this section does not constitute a contract for conducting the cremation of the decedent named in the authorization form or for the final disposition of the cremated remains of the decedent. The revocation of a cremation authorization form or modification of the arrangements for the final disposition of the cremated remains of the decedent pursuant to subsection (d) does not affect the validity or enforceability of any contract for the cremation of the decedent named in the authorization form or for the final disposition of the cremated remains of the decedent.

SECTION 6.

(a) A cremation authorization form authorizing the cremation of any body parts, including dead human bodies that were donated to science for purposes of medical education or research shall include at least all of the following:

(1) The identity of the decedent whose body was donated to science for purposes of medical education or research or the identity of the living person or a decedent from whom the body parts were removed; the name of the authorizing agent and the relationship of the authorizing agent to the decedent or the living person from whom the body parts were removed;

(2) A statement that the authorizing agent in fact has the right to authorize the cremation of the decedent or the body parts removed from the decedent or living person and a description of the basis of the person's right to execute the cremation authorization form;

(3) The authorization for the crematory facility to cremate the decedent or body parts removed from the decedent or living person and to process or pulverize the cremated remains as is the practice at such crematory facility;

(4) A statement of whether it is the crematory facility's practice to return all of the residue removed from the cremation chamber following the cremation or to separate and remove foreign matter from the residue before returning the cremated remains to the authorizing agent or the authorizing agent's designee;

(5) The name of the person who is to receive the cremated remains from the crematory facility;

(6) The manner in which the final disposition of the cremated remains is to occur, if known. If the cremation authorization form does not specify the manner of the final disposition of the cremated remains, it shall indicate that the cremated remains shall be held by the crematory facility for thirty (30) days after the cremation, unless, prior to the end of that period, they are picked up from the crematory facility by the person designated on the authorization form to receive them or by the authorizing agent, or are delivered or shipped by the operator of the crematory facility to one (1) of those persons. The authorization form shall indicate that if no instructions for the final disposition of the cremated remains are provided on the authorization form and that if no arrangements for final disposition have been made within the thirty (30) day period, the crematory facility may return the cremated remains to the authorizing agent. The authorization form shall further indicate that if no arrangements for the final disposition of the cremated remains have been made within sixty (60) days after the cremation and if the authorizing agent or person designated on the authorization form to receive the cremated remains has not picked them up or caused them to be picked up within that period, the operator may dispose of them in accordance with subdivisions (c)(1) or (2); and

(7) Certification of the authorizing agent that all of the information and statements contained in the authorization form are accurate.

(b) An authorizing agent who signs a cremation authorization form under this section is hereby deemed to warrant the accuracy of the information and statements contained in the authorization form, including the person's authority to authorize the cremation.

(c) At any time after executing a cremation authorization form and prior to the beginning of the cremation process, an authorizing agent who executed a cremation authorization form under this section may, in writing, revoke the authorization, cancel the cremation, and claim the decedent's body or the body parts for purposes of making alternative arrangements for the final disposition of the decedent's body or the body parts. The operator of a crematory facility shall cancel the cremation if the operator receives such a revocation before beginning the cremation.

(d) A cremation authorization form executed under this section does not constitute a contract for conducting the cremation of the decedent named in the authorization form or body parts removed from the decedent or living person

named in the form or for the final disposition of the cremated remains of the decedent or body parts. The revocation of a cremation authorization form or modification of the arrangements for the final disposition of the cremated remains of the decedent or the body parts pursuant to subsection (c) does not affect the validity or enforceability of any contract for the cremation of the decedent named in the authorization form, the cremation of body parts from the decedent or living person named in the authorization form, or the final disposition of the cremated remains of the decedent or body parts.

SECTION 7.

(a) The operator of a crematory facility may schedule the time for the cremation of a dead human body to occur at the operator's own convenience at any time after the conditions set forth in Section 4 of this act have been met and the decedent or body parts have been delivered to the facility, unless, in the case of a dead human body, the operator has received specific instructions to the contrary from the licensed establishment or the authorizing agent. The operator of a crematory facility becomes responsible for a dead human body or body parts when the body or body parts have been delivered to or accepted by the facility or an employee or agent of the facility.

(b) No operator of a crematory facility shall fail to do either of the following:

(1) Upon receipt at the crematory facility of any dead human body that has not been embalmed, and subject to the prohibition set forth in subdivision (c)(1) of this section, place the body in a holding or refrigerated facility at the crematory facility and keep the body in the holding or refrigerated facility until near the time the cremation process commences or until the body is held at the facility for eight (8) hours or longer. If the body is held for eight (8) hours or longer, place the body in a refrigerated facility at the crematory facility and keep the body in the refrigerated facility until near the time the cremation process commences; or

(2) Upon receipt of any dead human body that has been embalmed, place the body in a holding facility at the crematory facility and keep the body in the holding facility until the cremation process commences.

(c) Unless the instructions contained in the cremation authorization form specifically provide otherwise, no operator of a crematory facility shall:

(1) Remove any dead human body from the casket or alternative container in which the body was delivered to or accepted by the crematory facility; or

(2) Fail to cremate the casket or alternative container in which the body was delivered or accepted, in its entirety with the body. Provided, the crematory facility shall be permitted to remove any non-combustible materials from the casket or alternative container prior to cremation.

(d) No operator of a crematory facility shall simultaneously cremate more than one (1) decedent or body parts removed from more than one (1) decedent or living person in the same cremation chamber. This subsection does not

prohibit the use of cremation equipment that contains more than one (1) cremation chamber.

(e) No operator of a crematory facility shall permit any person other than employees of the crematory facility, a licensed funeral director or a designee of a funeral director, the authorizing agent for the cremation of the decedent, and persons authorized by the authorizing agent to be present in the holding facility or cremation room while any dead human bodies or body parts are being held there prior to cremation or are being cremated or while any cremated remains are being removed from the cremation chamber.

(f)(1) No operator of a crematory facility shall remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation or from the cremated remains after cremation unless the cremation authorization form specifically authorizes the removal thereof.

(2) No operator of a crematory facility who removes any dental gold, body parts, organs, or other items from a dead human body or assists in such removal shall charge a fee for doing so that exceeds the actual cost to the crematory facility for performing or assisting in the removal of such materials.

(g) Upon the completion of each cremation, the operator of a crematory facility shall remove from the cremation chamber all of the cremation residue that is practicably recoverable. If the cremation authorization form specifies that the cremated remains are to be placed in an urn, the operator shall place them in the type of urn specified on the authorization form. If the authorization form does not specify that the cremated remains are to be placed in an urn, the operator shall place them in a temporary container. If all of the recovered cremated remains will not fit in the urn selected or in the temporary container, the operator shall place the remainder in a separate temporary container, and the cremated remains placed in the separate temporary container shall be delivered, released, or disposed of along with those in the urn or other temporary container. Nothing in this section requires an operator of a crematory facility to recover any specified quantity or quality of cremated remains upon the completion of a cremation, but shall only require an operator to recover from the cremation chamber all of the cremation residue that is practicably recoverable.

(h) No operator of a crematory facility shall knowingly represent to an authorizing agent or a designee of an authorizing agent that an urn or temporary container contains the recovered cremated remains of a specific decedent or of body parts removed from a specific decedent or living person when it does not. This section does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimus amounts of the cremated remains of another decedent or of body parts.

(i) Operators of a crematory facility or a funeral director shall ship or cause to be shipped any cremated remains by a class or method of mail, common carrier service, or delivery service that has an internal system for tracing the location of the cremated remains during shipment and that requires a signed receipt from the person accepting delivery of the cremated remains.

(j) Operators of a crematory facility shall establish and maintain a system for accurately identifying each dead human body in the facility's possession, and for identifying each decedent or living person from whom body parts in the

facility's possession were removed, throughout all phases of the holding and cremation process.

(k) No operator of a crematory facility shall knowingly use or allow the use of the same cremation chamber for the cremation of dead human bodies, or human body parts, and animals.

SECTION 8.

(a) The authorizing agent who executed the form authorizing the cremation of a decedent is responsible for the final disposition of the cremated remains of the decedent or body parts.

(b) If the cremation authorization form does not contain instructions for the final disposition of the cremated remains of the decedent or body parts, no arrangements for the disposition of the cremated remains are made within thirty (30) days after the completion of the cremation, and the cremated remains have not been picked up within such thirty (30) day period by the person designated to receive them on the authorization form or by the authorizing agent, the operator of the crematory facility may release or deliver them in person, or have them delivered to the person designated to receive them on the cremation authorization form or, if no person has been so designated, to the authorizing agent.

(c)

(1) If the cremation authorization form does not contain instructions for the final disposition of the cremated remains of the decedent or body parts, if no arrangements for the final disposition of the cremated remains are made within sixty (60) days after the completion of the cremation, and if the cremated remains have not been picked up by the person designated on the authorization form to receive them or, in the absence of such a designated person, by the authorizing agent, the operator of the crematory facility may dispose of the cremated remains in a grave, crypt, or niche at any time after the end of that sixty (60) day period.

(2) If the cremation authorization form specifies the manner of the final disposition of the cremated remains, or if within that sixty (60) days after the completion of the cremation the authorizing agent makes arrangements for the final disposition of the cremated remains, and if either the arrangements have not been carried out within such sixty (60) day period because of the inaction of a party other than the operator of the crematory facility or the authorizing agent fails to pick up the cremated remains within that sixty (60) day period, the operator may dispose of the cremated remains in a grave, crypt, or niche at any time after the end of that period.

(3) When cremated remains are disposed of in accordance with this section, the authorizing agent who executed the cremation authorization form authorizing the cremation of the decedent or body parts is liable to the operator of the crematory facility or the licensed establishment for the cost of final disposition, which cost shall not exceed the reasonable cost for disposing of the cremated remains in a common grave or crypt in the county where the cremated remains were buried or placed in a crypt or niche.

(d)

(1) Except as provided in subdivision (2), no person shall:

(A) Dispose of the cremated remains of a dead human body or body parts in such a manner or in such a location that the cremated remains are commingled with those of another decedent or body parts removed from another decedent or living person; or

(B) Place the cremated remains of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person in the same urn or temporary container.

(2) Notwithstanding the provisions of subdivision (1), a person may:

(A) Scatter cremated remains at sea or by air or in a dedicated area at a cemetery used exclusively for the scattering on the ground of the cremated remains of dead human bodies or body parts.

(B) Commingle cremated remains of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person or the placement in the same urn or temporary container of the cremated remains of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person when each authorizing agent who executed the cremation authorization form authorized the commingling of the cremated remains or the placement of the cremated remains in the same urn or temporary container on the authorization form, and

(C) Commingle by the individual designated on the cremation authorization form authorizing the cremation of the decedent or body parts to receive the cremated remains, other than a funeral director or employee of a cemetery, or by the authorizing agent who executed the cremation authorization form, after receipt of the cremated remains, of the cremated remains with those of another decedent or of body parts removed from another decedent or living person or the placing of them by any such person in the same urn or temporary container with those of another decedent or of body parts removed from another decedent or living person.

SECTION 9.

(a) No operator of a crematory facility shall fail to ensure that a written receipt is provided to the person who delivers a dead human body or body parts to the facility for cremation.

(b) If the dead human body is other than one that was donated to science for purposes of medical education or research, the receipt shall be

signed by both a representative of the crematory facility and the person who delivered the decedent to the crematory facility and shall indicate:

- (1) The name of the decedent;
- (2) The date and time of delivery;
- (3) The type of casket or alternative container in which the decedent was delivered to the facility;
- (4) The name of the person who delivered the decedent to the facility, if applicable;
- (5) The name of the funeral home or other establishment with whom the delivery person is affiliated; and
- (6) The name of the person who received the decedent on behalf of the facility if the dead human body was donated to science for purposes of medical education or research.

(c) The receipt shall consist of a copy of the cremation authorization form authorizing the cremation of the decedent or body parts that has been signed by both a representative of the crematory facility and the person who delivered the decedent or body parts to the crematory facility and that indicates the date and time of the delivery. The operator may provide the copy of the receipt to the person who delivered the decedent or body parts to the facility either in person or by certified or registered mail, return receipt requested.

(d) At the time of releasing cremated remains an operator of a crematory facility shall ensure that a written receipt signed by both a representative of the crematory facility and the person who received the cremated remains is provided to the person who received the cremated remains. Unless the cremated remains are those of a dead human body that was donated to science for purposes of medical education or research or are those of body parts, the receipt shall indicate the name of the decedent; the date and time of the release; the name of the person to whom the cremated remains were released; if applicable, the name of the funeral home, cemetery, or other entity to whom the cremated remains were released; and the name of the person who released the cremated remains on behalf of the crematory facility. If the cremated remains are those of a dead human body that was donated to science for purposes of medical education or research or are those of body parts, the receipt shall consist of a copy of the cremation authorization form that authorizes the cremation of the decedent or body parts that has been signed by both a representative of the crematory facility and the person who received the cremated remains and that indicates the date and time of the release. If the cremated remains were delivered to the authorizing agent or other individual designated on the cremation authorization form, the receipt required by this section shall accompany the cremated remains, and the signature of the authorizing agent or other designated individual on the delivery receipt meets the requirement of this section that the person receiving the cremated remains sign the receipt provided by the crematory facility.

(e) During the time that the crematory remains engaged in the business of cremating dead human bodies or body parts, the crematory facility shall keep the following for a period of at least seven (7) years:

(1) A copy of each receipt issued upon acceptance by or delivery to the crematory facility of a dead human body;

(2) A record of each cremation conducted at the facility, containing at least the name of the decedent or, in the case of body parts, the name of the decedent or living person from whom the body parts were removed, the date and time of the cremation, and the final disposition made of the cremated remains;

(3) A copy of each delivery receipt issued under subsection (b) of this section; and

(4) A separate record of the cremated remains of each decedent or the body parts removed from each decedent or living person that were disposed of containing at least the name of the decedent, the date and time of the cremation, and the location, date, and manner of final disposition of the cremated remains.

(f) All records required to be maintained under this act are subject to inspection by the Board of Funeral Directors and Embalmers or an authorized representative of the board, upon reasonable notice, at any reasonable time.

SECTION 10.

(a) A person executing a cremation authorization form as the authorizing agent shall use diligent efforts to determine whether a pacemaker, cardiac defibrillator, or any other mechanical or radioactive device or implant is present in the decedent's body that poses a hazard to the health or safety of the personnel of the crematory or to the cremation chamber during the cremation process and shall indicate the presence of the device or implant on the cremation authorization form. If the decedent is to be delivered to the crematory facility by a funeral director, the person executing the authorization form shall inform the funeral director of the presence of the device or implant.

(b) If a funeral director delivers the decedent to a crematory facility, the funeral director shall take reasonable precautions to ensure necessary actions are taken to remove a device or implant from the decedent, or to render the device or implant nonhazardous prior to delivering the decedent to the crematory facility if the funeral director is aware of such a device or implant.

SECTION 11.

(a) The operator of a crematory facility is not liable in damages in a civil action for any of the following actions or omissions, unless the actions or omissions were made with malicious purpose, in bad faith, or in a wanton or reckless manner:

(1) Having performed the cremation of the decedent, or having released or disposed of the cremated remains, in accordance with the instructions set forth in the cremation authorization form executed by the decedent on an antemortem basis; or

(2) Having performed the cremation of the decedent or body parts removed from the decedent or living person or having released or disposed of the cremated remains in accordance with the instructions set forth in a cremation authorization form executed in person by the person

authorized to serve as the authorizing agent for the cremation of the decedent or for the cremation of body parts of the decedent or living person, named in the cremation authorization form.

(3) Any failure to correctly identify a dead human body prior to cremation.

(b) The operator of a crematory facility is not liable in damages in a civil action for refusing to accept a dead human body or body parts or to perform a cremation under any of the following circumstances, unless the refusal was made with malicious purpose, in bad faith, or in a wanton or reckless manner:

(1) The operator has actual knowledge that there is a dispute regarding the cremation of the decedent or body parts, and the operator has not received an order of the court having jurisdiction ordering the cremation of the decedent or body parts;

(2) The operator has a reasonable basis for questioning the accuracy of any of the information or statements contained in a cremation authorization form executed that authorizes the cremation of the decedent or body parts; or

(3) The operator has any other lawful reason for refusing to accept the dead human body or body parts or to perform the cremation.

(c) The operator of a crematory facility is not liable in damages in a civil action in connection with the cremation of, or disposition of the cremated remains of, any dental gold, jewelry, or other items of value delivered to the facility with a dead human body or body parts, unless:

(1) The cremation authorization form authorizing the cremation of the decedent or body parts contains specific instructions for the removal or recovery and disposition of any such dental gold, jewelry, or other items of value prior to or after the cremation, and the operator has failed to comply with the written instructions; or

(2) The actions or omissions of the operator were made with malicious purpose, in bad faith, or in a wanton or reckless manner.

(d) This section does not create a new cause of action against or substantive legal right against the operator of a crematory facility;

(e) This section does not affect any immunities from civil liability or defenses established by law to which the operator of a crematory may be entitled.

SECTION 12. Tennessee Code Annotated, Title 62, Chapter 5, is amended by deleting Section 62-5-501 in its entirety and by substituting Sections 1 through 11 of this act as new part 5.

SECTION 13. Tennessee Code Annotated, Section 68-3-509, is amended by deleting such section in its entirety.

SECTION 14. This act shall take effect July 1, 1999, the public welfare requiring it.

PASSED: May 13, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 20th day of May 1999


DON SINDQUIST, GOVERNOR